



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,723	03/29/2004	Robert D. Butterfield	080623-0565	4808
80236 7590 02/24/2010 McDermott Will & Emery LLP 11682 EL CAMINO REAL SUITE 400 SAN DIEGO, CA 92130-2047				
EXAMINER				
MENDEZ, MANUEL A				
ART UNIT		PAPER NUMBER		
3763				
NOTIFICATION DATE		DELIVERY MODE		
02/24/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

SIP_Docket@mwe.com

Office Action Summary

Application No.

10/812,723

Applicant(s)

BUTTERFIELD ET AL.

Examiner

Manuel A. Mendez

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/IB)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 03/29/2004 and 08/30/2005

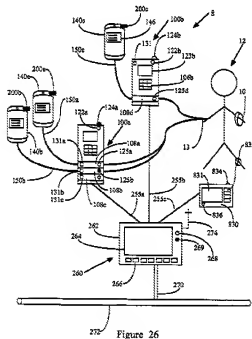
DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 7-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over **De La Huerga** (US 2002/0038392) in view of **Green** (US 7,068,170).



In figure 26, the De La Huerga patent shows an infusion system having an upstream end with a container and a downstream end wherein a patient is located, the infusion system further comprising a first data transmitting device (RFID devices) located upstream (200a) or downstream (10), and a first data reader device (122). As

stated in the specification, the transponder (122) is an RFID tag reader that can communicate with other system devices including the patient ID devices (10), physician ID devices (40), bag tags (200), etc. The De La Huerga patent does not disclose the transmission of data into the medical fluid used for infusion into the patient. However, such transmission would have been considered conventional in the art at the time the invention was made in view of the teachings of Green (US 7,068,170).

The Green patent demonstrates the conventionality of transmitting RFID tags into a liquid. The specification of the Green patent discloses a preferred embodiment wherein the RFID tags are transmitted or added to a liquid to create a mixture. The tags can be identified by a transponder. Since Green teaches that RFID tags can be mixed with liquids, an artisan skilled in the medical infusion arts would have considered the mixing of RFID tags with infusion medication as an alternative in the process of designing the infusion system.

Based on the above observations, for a person of ordinary skill in the art, modifying the De La Huerga patent with the transmission of RFID tags in the medication fluid, as taught by Green, would have been considered obvious in view of the proven conventionality of this particular enhancement, and moreover, because the mixing of RFID devices with medication fluid would have facilitated the identification of the particular medication at any point in the infusion process to ensure that patients received the proper medication at all times.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over **De La Huerga** (US 2002/0038392) in view of **Green** (US 7,068,170) as applied to claims 1-5 and 7-31 above, and further in view of **Kamen** (US 5,222,946).

The De La Huerga patent does not disclose a drip chamber in combination with an infusion system. However, the use of drip chambers in infusion systems would have been considered conventional in the art at the time the invention was made as evidenced by the teachings of Kamen.

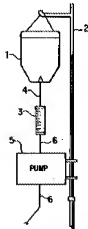


FIG. 1 (PRIOR ART)

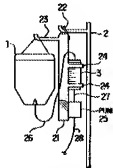


FIG. 2

The Kamen patent shows in figures 1 and 2, an infusion system having a drip chamber between an IV bag and an infusion pump. Based on the above observations, for a person of ordinary skill in the art, modifying the De La Huerga patent with a drip chamber, as taught by Kamen, would have been considered obvious in view of the proven conventionality of this infusion system enhancement, and moreover, because the addition of a drip chamber would have enhanced the fluid metering capabilities of the overall infusion system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel A. Mendez whose telephone number is 571-272-4962. The examiner can normally be reached on 0730-1800 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Nicholas D. Luccesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Manuel A. Mendez/

Primary Examiner, Art Unit 3763

Manuel A. Mendez
Primary Examiner
Art Unit 3763

MM

Application/Control Number: 10/812,723
Art Unit: 3763

Page 6